

MRS. CHARLES H. BLAKE

IBLA 75-336

Decided June 6, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U 689-G, terminated by operation of law for failure to pay annual rental on or prior to the due date.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Failure to raise credible reasons that illness prevented timely payment, with no other justification for late payment, requires denial of reinstatement.

APPEARANCES: Mrs. Charles H. Blake, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mrs. Charles H. Blake appeals from a decision of the Utah State Office, Bureau of Land Management, denying her petition for reinstatement of oil and gas lease U 689-G, terminated by operation of law for failure to make timely payment of the rent as provided in 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a).

The anniversary date of the lease was October 1, 1974. A check dated September 28, 1974, arrived in an envelope bearing an October 7, 1974, postmark. Failure to mail the payment "sufficiently in advance of the anniversary date to account for normal delays * * *" constitutes a lack of reasonable diligence. 43 CFR 3108.2(c)(2).

In her Statement of Reasons dated February 17, 1975, the appellant claims that her failure to make timely payment was justified by her poor health around the time the payment was due. The credibility of this claim is clouded by her statements in her Petition for Reinstatement, dated October 24, 1974. In that petition, the appellant stated that she thought she had mailed the payment on September 28, but she guessed that she might have failed to do so because the payment might have been "mixed up with some of my other mail," or because she had been taking medication for pain. She then stated, "I can't recall exactly how I felt on the day of the 28th." Cf. Martha N. Jackson, 18 IBLA 92 (1974).

Because the appellant, after less than a month, was unable to recall the state of her health in the period during which the payment could have been made with reasonable diligence, we cannot accept her later claim of poor health to justify her failure to make timely payment of the rent.

[1] An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that her failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108-1(c); Louis Samuel, 8 IBLA 268 (1972). Because the appellant mailed her payment after the anniversary date and because she gave no credible reason which would justify the late payment, reinstatement of the lease must be denied. 1/

1/ We note that in Mrs. Charles H. Blake, 10 IBLA 175 (1973), this Board reinstated a different oil and gas lease owned by the present appellant. In that case, we noted that appellant's husband, who had handled all leasing matters, had died in June of 1971, that in mid-November appellant had undergone major surgery and finally had not even been aware of the requirement of annual rental payment. Viewing the totality of these circumstances, the Board properly decided that appellant's failure to timely pay was justifiable. The situation in the instant case stands in sharp relief when compared to Blake, *supra*. Appellant having successfully pursued an appeal of the termination of one lease clearly was aware of the requirement of timely payment. Similarly, appellant should have been far more conversant with her business obligations than she was immediately following her husband's death. Finally, appellant does not allege that she was taking medication. Rather she states "[w]hen I made the check out, it could have been during one or my more painful periods." While we are sympathetic to the appellant, we cannot say that her failure to pay was justifiable under the standards set out in previous decisions by this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE LEWIS DISSENTING:

I disagree with the majority and would reinstate the oil and gas lease herein for the following reasons.

The rental on the lease, due on October 1, 1974, was received October 10, 1974. The check was dated September 28 but the envelope was postmarked October 7.

The appellant underwent major surgery in November 1971. In the present case, now between 74 and 76 years old, appellant by her several letters to the Department, shows she is obviously ill and was under drugs for pain at the time she apparently attempted to mail the rental. Thus she writes:

* * * I do not understand why you did not receive this annual rental on or before the anniversary date.

According to my check book record it was written on the 28th of Sept. And well as I can recall this rental payment was also mailed on the 28th -- However your records show that you did not receive it until the 10th of Oct. -- I do not like to say it was the fault of our U.S. Mail Service because they seem to be doing a good job in mail delivery.

The only other possible reason why you didn't receive this payment before Oct. 10th, that the payment check and letter could have been mixed up with some of my other mail, and was mailed at a later date than the 28th -- but this is something I can only surmise.

For the past several months I have been under several doctors care in Seattle for stomach trouble. For this problem I have taken a number of drugs and other medication to help ease the pain. When I made this check out, it could have been during one of my more painful periods. There have been so many I cant recall exactly how I felt on the day of the 28th. (Letter of October 24, 1974).

* * * Presently, I'm living alone, to a certain degree this makes me partially handicapped and limited in taking care of my business affairs when I'm ill and not able to leave my home. * * *

The reason I haven't sent this statement to you sooner, I just got out of the Providence Hospital in Everett. * * * (Letter of February 24, 1975). [Emphasis supplied.]

In these circumstances, because of appellant's age combined with obvious illness at the time of the mailing, and the fact it is well known that drugs to kill pain temporarily dull one's mental faculties, I think her lease should be reinstated. I believe her reason for the payment being late meets the standard for "justifiable" laid down in Louis Samuel, 8 IBLA 268 (1972), and followed in Ada E. Lundgren, 17 IBLA 132 (1974). If the majority of the panel herein require more data on the exact nature of appellant's illness, including her exact medical condition on September 28, 1974, based on the statements of the doctors attending her, I am sure such information can be obtained.

Anne Poindexter Lewis
Administrative Judge

